

the Secretary of HHS or Education shall conduct the review provided for in 45 CFR 81.106.

§§ 605.62—605.90 [Reserved]

**PART 606—ENFORCEMENT OF
NONDISCRIMINATION ON THE
BASIS OF HANDICAP IN PRO-
GRAMS OR ACTIVITIES CON-
DUCTED BY THE NATIONAL
SCIENCE FOUNDATION**

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AUTHORITY: 29 U.S.C. 794.

SOURCE: 54 FR 4791, Jan. 31, 1989, unless otherwise noted.

§ 606.1 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 606.2 Application.

This part applies to all programs or activities conducted by the Foundation, except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States. Programs and activities receiving Federal

financial assistance from the Foundation are covered by 45 CFR part 605.

§ 606.3 Definitions.

For purposes of this part, the term—
Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the Foundation. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, note takers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes the Foundation's alleged discriminatory action in sufficient detail to inform the Foundation of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Foundation means the National Science Foundation.

Individual with handicaps means any person in the United States who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) *Physical or mental impairment* includes—

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(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term *physical or mental impairment* includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) *Major life activities* includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the Foundation as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the Foundation as having such an impairment.

Qualified individual with handicaps
means—

(1) With respect to any Foundation program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose

of the program or activity without modifications in the program or activity that the Foundation can demonstrate would result in a fundamental alteration in its nature;

(2) With respect to any other program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(3) *Qualified handicapped person* as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 606.40.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1617); and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602, 92 Stat. 2955); the Rehabilitation Act Amendments of 1986 (Pub. L. 99-506, 100 Stat. 1810); and the Civil Rights Restoration Act of 1987 (Pub. L. 100-259, 102 Stat. 28). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

§§ 606.4—606.9 [Reserved]

§ 606.10 Self-evaluation.

(a) The Foundation shall, within one year of the effective date of this part, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the Foundation shall proceed to make the necessary modifications.

(b) The Foundation shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The Foundation shall, for at least three years following completion of the evaluation required under paragraph (a) of this section, maintain on file and make available for public inspection:

- (1) A list of the interested persons who made comments;
- (2) A description of areas examined and any problems identified; and
- (3) A description of any modifications made.

§ 606.11 Notice.

The Foundation shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the Foundation and make such information available to them in such manner as the Director of the Foundation finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 606.12–606.29 [Reserved]

§ 606.30 General prohibitions against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the Foundation.

(b)(1) The Foundation, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

- (i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;
- (ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;
- (iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;
- (iv) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to

provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The Foundation may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The Foundation may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(4) The Foundation may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude qualified individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the Foundation; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The Foundation, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of

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individuals with handicaps is not prohibited by this part.

(d) The Foundation shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

§§ 606.31—606.39 [Reserved]

§ 606.40 Employment.

No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the Foundation. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities.

§§ 606.41—606.49 [Reserved]

§ 606.50 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 606.51, no qualified individual with handicaps shall, because the Foundation's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Foundation.

§ 606.51 Program accessibility: Existing facilities.

(a) *General.* The Foundation shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(1) Necessarily require the Foundation to make each of its existing facilities accessible to and usable by individuals with handicaps; or

(2) Require the Foundation to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where Foundation personnel believe that the proposed action would fundamentally alter the program

or activity or would result in undue financial and administrative burdens, the Foundation has the initial burden of establishing that compliance with § 606.51(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Foundation Director or his or her designee after considering all Foundation resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or burdens, the Foundation shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods.* The Foundation may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The Foundation is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The Foundation, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the Foundation shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(c) *Time period for compliance.* The Foundation shall comply with the obligations established under this section within 60 days of the effective date of this part except that where structural

changes in facilities are undertaken, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the Foundation shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The Foundation shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the Foundation's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ 606.52 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the Foundation shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

§§ 606.53–606.59 [Reserved]

§ 606.60 Communications.

(a) The Foundation shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The Foundation shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the Foundation.

(i) In determining what type of auxiliary aid is necessary, the Foundation shall give primary consideration to the requests of the individual with handicaps.

(ii) The Foundation need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the Foundation communicates with applicants and beneficiaries by telephone, telecommunications devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

(b) The Foundation shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The Foundation shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the Foundation to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where Foundation personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative

burdens, the Foundation has the initial burden of establishing that compliance with § 606.60 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Foundation Director or his or her designee after considering all Foundation resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the Foundation shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§ 606.61—606.69 [Reserved]

§ 606.70 Complaint procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the Foundation.

(b) The Foundation shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Director, Office of Equal Opportunity Programs (OEOP), shall coordinate implementation of this section.

(d) Persons wishing to submit complaints should submit complete complaints (see § 606.03) to the Office of Equal Opportunity Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. In accordance with the procedures outlined below, the Foundation will accept all complete complaints and will either undertake to investigate them if they are within the jurisdiction of the Foundation and submitted within 180 days of the alleged acts of discrimination or in the case of complaints not within

the jurisdiction of the Foundation, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity. Complete complaints submitted after the 180 day time limit may also be acted upon at the discretion of the Foundation if good cause for the delay in submission is found.

(e) The Foundation shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or a facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), is not readily accessible to and usable by individuals with handicaps.

(f) Within 180 days of the receipt of a complete complaint, the Director, Office of Equal Opportunity Programs (OEOP), or his or her designee or delegate, will investigate the complaint and shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of a right to appeal to the Director of the Foundation.

(g)(1) A complainant may appeal findings of fact, conclusions of law, or remedies to the Director of the Foundation. Such appeals must be in writing and must state fully the basis for the appeal, proposed alternative findings of fact, conclusions of law, or remedies. They must be sent (as evidenced by an appropriate postmark or other satisfactory evidence) within 90 days after the date of receipt from the Foundation of the letter described in paragraph (f) of this section. The Foundation may extend this time for good cause.

(2) The Director shall notify the complainant of the results of the appeal within 30 days of the receipt of the appeal. If the Director determines that additional information is needed from the complainant, the Director shall have 30 days from the date such additional information is received from the complainant to make a determination on the appeal.

(h) The time limits for sending a letter to the complainant in paragraph (f) and for deciding an appeal in paragraph (g)(2) of this section may be extended with the permission of the Assistant Attorney General.

[54 FR 4791, Jan. 31, 1989, as amended at 59 FR 37437, July 22, 1994]

§§ 606.71—606.99 [Reserved]

PART 607—SALARY OFFSET

Sec.

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AUTHORITY: 5 U.S.C. 5514; E.O. 12107, 3 CFR, 1978 Comp., p. 264; 5 CFR part 550, subpart K.

SOURCE: 58 FR 68769, Dec. 29, 1993, unless otherwise noted.

§ 607.1 Purpose and scope.

(a) This part provides procedures for the collection by administrative offset of a federal employee's salary without his or her consent to satisfy certain debts owed to the Federal government. This part applies to all Federal employees who owe debts to the National Science Foundation (NSF) and to current employees of NSF who owe debts to other Federal agencies. This part does not apply when the employee consents to recovery from his or her current pay account.

(b) This part does not apply to debts or claims arising under:

- (1) The Internal Revenue Code of 1954, as amended, 26 U.S.C. 1 *et seq.*;
- (2) The Social Security Act, 42 U.S.C. 301 *et seq.*;
- (3) The tariff laws of the United States; or
- (4) Any case where a collection of a debt by salary offset is explicitly provided for or prohibited by another statute.

(c) This part does not apply to any adjustment to pay arising out of an employee's selection of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay if the amount to be recovered was accumulated over four pay periods or less.

(d) This part does not preclude the compromise, suspension, or termination of collection action where appropriate under the standards implementing the Federal Claims Collection Act, 31 U.S.C. 3711 *et seq.*, and 4 CFR parts 101 through 105.

(e) This part does not preclude an employee from requesting waiver of an overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, or in any way questioning the amount or validity of the debt by submitting a subsequent claim to the General Accounting Office. This part does not preclude an employee from requesting a waiver pursuant to other statutory provisions applicable to the particular debt being collected.

(f) Matters not addressed in this part should be reviewed in accordance with the Federal Claims Collection Standards at 4 CFR 101.1 *et seq.*

§ 607.2 Definitions.

For the purposes of this part the following definitions will apply:

Agency means an executive agency as defined at 5 U.S.C. 105, including the U.S. Postal Service and the U.S. Postal Rate Commission; a military department as defined at 5 U.S.C. 102; an agency or court in the judicial branch; an agency of the legislative branch, including the U.S. Senate and House of Representatives; and other independent establishments that are entities of the Federal government.

Certification means a written debt claim received from a creditor agency which requests the paying agency to offset the salary of an employee.

Chief Financial Officer means the Chief Financial Officer of NSF or such other official of NSF who is designated by the Chief Financial Officer to determine whether an employee is indebted to the United States and to take action to collect such debts.